

PANEL III - GENERAL DISCUSSION

N. Rao Rampilla:

I would like to comment on two issues. First, how can one convince others that human rights is good for business? In my personal opinion, one cannot. It is a contradiction. A glaring example of this is the Eastern Airline strike here in Georgia.

Second, I think human rights is fundamentally a struggle. Westerners conceive human rights in terms of structures found in a constitution and laws. Institutions such as Legal Aid, with some limitations, help to enforce these rights. At an international level, the United Nations and the Commission of Human Rights perform a similar task within their own limitations. This does not cater to the needs of the Third World.

Sequel to British colonialism in India, we have a written constitution to protect human rights. In reality, this did not help us to protect the human rights of the common man. The Westminster Constitutional Model ignored the social realities and unwritten social laws present in India. India, as well as many African states, lacked any form of Western constitutional structures prior to European colonization.

While operating under these models, how could we make those vast masses of people complain and fight for their rights? I think this is an intellectual problem that someone in the international community should address.

Louis B. Sohn:

I just wanted to ask Mr. Padilla whether Canada joining the OAS is going to make any difference as far as human rights are concerned, whether they are planning to ratify the convention. If they do, perhaps that might be an extra argument for the United States to do it also.

David Padilla:

Thank you for asking that question because I had intended to mention Canada's joining the OAS. Canada deposited its instrument of ratification to the OAS Charter on January 8, 1990. I have already spoken to several people in Ottawa and have exchanged documents

with them. Their previous Permanent Observer to the OAS was both very keen on human rights and knowledgeable about what the Commission was doing. We talked freely and I assume that this will continue with Canada's admission. As yet I have not been able to learn Canada's intention with respect to the Convention, though maybe I have been talking to the wrong people. Frankly, I do not think that the Canadian leadership has yet focused on the issue. First, I think it must be accepted by the bar associations and academia. It should be remembered that Canada has ratified both United Nations Covenants. Therefore, I would expect Canada to ratify the Convention in due course. The fact that Canada initiated a request that the Commission go to Haiti shows that they are prepared to play an active role in human rights in the OAS. In due course we will have to hire some Canadian staff and that should make a difference.

The Canadian contribution to the OAS must still be determined. Canada's participation will not take up the slack in the OAS' budget. Our quota system is based on a combination of population and per-capita income. While Canada is a vast country, it does not have a very large population.

It will be interesting to see whether they offer a candidate for the Commission. The Commission's character really could change if that is the case because right now we have for the first time two members from the English-speaking Caribbean and one from the United States. At present the Commission consists of three English speakers, three Spanish speakers, and one Portuguese speaker. I think one of the reasons it has been effective in the past is because it is seen in Latin America, and known in the United States, as a Latin institution. Historically, five or six of its members were always Spanish speakers, but that may be changing. I am sure a Canadian member would speak both English and French, and might well be trilingual.

Larry Johnson:

I would like to follow up on some of Doctor Rao's comments. He is certainly correct that the issue of human rights is indeed a struggle. A few years ago in the Commission on the Elimination of Discrimination Against Women controversy erupted when some of its experts from the Arab world brought up the question of the influence of Sharia on discrimination against women. Evidently, Islamic law restricts women from exercising certain inheritance and property rights which men enjoy. The Commission requested the Secretariat to prepare a study on this. Arab representatives in ECO-

SOC and the Third Committee were alarmed by the Commission's experts who proposed the request. I did not mean to highlight that particular example, but it is an ongoing situation that shows the need for, and difficulties of, the universal approach as opposed to one based on the national or regional level.

Attempting to merge, codify, and develop a universal standard for all societies and cultures is extremely difficult. You may be right that in Western countries civil and political rights are emphasized. I think in this country "civil rights," meaning both civil and political rights, are extremely important, whereas in the Third World, economic, social and cultural rights may rather be in the forefront of people's concerns. None of us intended to suggest that human rights should be used as a tool for business. If you look at Eastern Europe, the exercise of civil and political rights is very good for business from an American or European businessperson's point of view. It does not have to be that way, but to the extent that business benefits from observance of human rights obligations, that can help on Capitol Hill. The art of politics is persuading the other person that what is in your interest is also in his or her interest. This is the point when trying to drive something through Congress. Legislators must be convinced that it is in *their* interest, as well as ours, to have these conventions and covenants ratified.

Craig Baab:

I think it is appropriate to conclude this conference with this particular panel and a focus on regional activities. I recall a minister of mine a few years ago who gave a sermon on the fact that nothing is real unless it is immediate. He went on to say that if you are from Nepal, your notion of a mountain is one thing, and if you are from Orlando, Florida it is a 17-foot bump in the road. I say this because I think this has been the theme throughout the last day-and-a-half when we talked about ratifying treaties. We just heard a question concerning how we can get meaning from all of this. In speaking of reservations, understandings, declarations, strategy, and how to have a public relations campaign that means something, we keep coming back to a problem that we have had in the United States: how are we to persuade the members of the United States Senate that these treaties are important? What will they do? What difference will they make? In a number of the cases, the answers are not so hot. I think that is partly a reflection of why most of them have not been ratified. My request is for all of us to give some thought, and I would suggest

that it should be in the regional context because while the European Court's recent decision has no binding effect on the United States, it certainly has gotten our attention. The example that Mr. Padilla gave concerning disappearances is a specific case where regional activities are accomplishing something. Those are the kinds of examples that we ought to think more about in applying all of these treaties, so that when we speak to Senators it means something to them. I do not know how we ought to take advantage of what you all have done and try to apply it in other cases dealing with other treaties, but I think that it would be helpful to give some thought to that.

Second, I would like the reaction of this panel on the use or involvement of law schools in our efforts. I think that one of the useful involvements is what we have seen here in the last two days. There is the *Georgia Journal*, the activities of the students here and at American University in Washington. However, they are largely at an academic level. How may we take advantage of this enormous resource of people, brain power, enthusiasm, and resources to be actively involved in this process of ratification? In particular, I would like your reaction to that and also to the work of the coalition of non-governmental organizations in Washington seeking to get these treaties ratified. We would like very much to have you all formally participate in our activities, even if only by mail. I think that there is a huge need for research. You have one of the best sources in the United States in your international law library. What we have seen here is a terrific interest and enthusiasm. Finally, I would like a reaction from Professor Sohn or others on how we might involve law students or even the American Society of International Law in a study over the next year on the treaty-making process and how that process ought to be strengthened.

Neri Sybesma-Knol:

I feel a bit awkward here as I do not teach at an American law school. I teach human rights law to not only a number of Belgian students, but also to a group of some 40 people from developing countries. I always tell them that by spreading the idea of the importance of individual applications to international institutions they could be instrumental as a lawyer wherever they go. Actually, we discuss in detail the admissibility requirements of the applications to the Human Rights Committee. One of our examination questions is to draw up a complaint with facts departing from a case that has been before the Committee. I think students should be taught that

not only can they be actively involved as students but also as professionals, in the promotion of human rights. Of course, a great deal can be done in the curriculum. People can become aware of the instruments. But, I got the impression yesterday that for ten years or so there has been a sort of stand-still in the United States. Correct me if I am wrong, but there should now be a revival of interest by the faculty and students in the law students in the law schools. Everybody should be encouraged. I think that it is very worthwhile, otherwise I would not be here today.

I also think there is a difference when one talks of the business advantages to the promotion of human rights. It is a matter of public law as opposed to private law. You are not defending someone when you promote human rights. You are not thinking of a client and how much will he pay. You are thinking about the common good and human rights in general. You think about the values of law and order, equity, and justice. I think that is the difference between private law and public law. In general, most of the money is not to be made in public law, but is to be made in private law.

Larry Johnson:

I am not sure whether it is particularly responsive to the question, but it is a point which I try to bring up periodically, often without great success. For many law schools, I have been told that courses in international law, the law of human rights, jurisprudence, the legal process, etc. are known as "cream puff" subjects, vis-a-vis other subjects, such as contracts, torts, and taxation, which are "bread and butter" courses. The idea has been raised to make general international law or a segment thereof somehow obligatory so that every law student who graduates from an American law school knows at least what a treaty is. This problem appeared during the *PLO* case¹ when, I am told, lawyers from one department of the government were talking to lawyers from another department of the government who had virtually no idea what a treaty was! They thought it was some fuzzy document of good intentions drawn up by diplomats and that it was not "real" law in the United States domestic law sense. I wonder, where is it really taught or emphasized that pursuant to the Constitution, treaties are the supreme law of the land on the

1. *United States v. The Palestine Liberation Organization*, 690 F. Supp. 1243 (S.D.N.Y. 1988).

same level as acts of Congress? Within constitutional law presumably, but it seems to me that the very simple proposition that a treaty is a binding contract between governments ought to be taught somewhere—and taught with a great deal of emphasis.